



NEIL ABERCROMBIE  
GOVERNOR

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LT. GOVERNOR

**STATE OF HAWAII  
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KEALI'I S. LOPEZ  
DIRECTOR

EVERETT KANESHIGE  
DEPUTY DIRECTOR

**PRESENTATION OF THE  
PROFESSIONAL AND VOCATIONAL LICENSING DIVISION**

**TO THE HOUSE COMMITTEE ON  
ECONOMIC REVITALIZATION AND BUSINESS**

**TWENTY-SIXTH LEGISLATURE  
Regular Session of 2012**

**Tuesday, January 24, 2012  
8:30 a.m.**

**TESTIMONY ON HOUSE BILL NO. 1830, RELATING TO ARBITRATION.**

**TO THE HONORABLE ANGUS L.K. MCKELVEY, CHAIR,  
AND MEMBERS OF THE COMMITTEE:**

My name is Alan Taniguchi, Executive Officer for the Real Estate Appraiser Program, Professional and Vocational Licensing Division ("PVLD") of the Department of Commerce and Consumer Affairs ("Department"). Thank you for the opportunity to present testimony on House Bill No. 1830, Relating to Arbitration. The Department opposes this bill.

This bill seeks to establish a process to select unbiased real estate appraisers for arbitration proceedings and requires the Department to provide a list of these appraisers. Chapter 658A, Hawaii Revised Statutes ("HRS"), also known as the "Uniform Arbitration Act" already addresses the issues this bill seeks to resolve. Section

658A-11 delineates the arbitrator selection process and Section 658A-12 outlines the disclosure requirements which will ensure the arbitrator's impartiality. Finally, the courts have jurisdiction over Chapter 658A and the authority to appoint an arbitrator (§658A-11), grant immunity to arbitrators (§658A-14), and vacate awards (§658A-23). For these reasons, issues regarding the selection of an arbitrator are more appropriately the function of the court rather than the Department.

Finally, section (d), page 2, lines 4-13, requires the Department to provide a list of appraisers to the lessor and lessee. In addition, section d(3), page 2, line 13 wants appraisers on the list to be "unbiased". That term is too vague and subjective for the Department to comply with this requirement.

The Department believes these issues are addressed in Chapter 658A and thus these amendments are not necessary.

Thank you for the opportunity to testify and we ask that this bill be held.



Hawaii Reserves, Inc.  
A LAND MANAGEMENT COMPANY

January 23, 2012

Via E-Mail: ERBtestimony@Capitol.hawaii.gov

House Committee on Economic Revitalization & Business

Rep. Angus L. K. McKelvey, Chair

Rep. Isaac W. Choy, Vice Chair

**Re: H.B. 1830 (Re: Arbitration)**

**Testimony In Opposition**

**Hearing: Tuesday, January 24, 2012, 8:30 a.m., Conf. Rm. 312**

Honorable Chair McKelvey, Vice Chair Choy and Committee Members:

Aloha and thank you for allowing me the opportunity to testify in opposition to House Bill 1830 on behalf of Hawaii Reserves, Inc., a land management company located in Laie, Oahu. We manage and own approximately 7,000 acres currently in agricultural, residential and commercial uses.

While this bill may be well-intentioned, it is deficient in a number of ways. First, it violates the intention of the Hawaii Arbitration Law, which provides an alternative to judicial proceedings and allows the parties involved to gain more control over the outcome of the dispute process. The proposed creation of yet another process which commands the use of real estate appraisers in arbitration proceedings contradicts existing law as it severely limits the parties' ability to appoint the individual or panel which will make the final decision.

Second, there is no logical basis to require only appraisers to serve as arbitrators in proceedings to determine the fair market value or rental of real property. If this requirement were applied across the dispute resolution landscape, decisions in various types of arbitration proceedings, and in numerous cases in all courts, would need to be made by judges and juries who are qualified experts or specialists in the specific subject matter involved in each proceeding. But that is not the case. While familiarity with appraisals may be helpful for real property valuation proceedings, such familiarity is just one factor along with the more important qualifications of impartiality, knowledge of the law, and good judgment.

Finally, the practical effect of the proposed bill is to now require the parties to existing lease agreements to comply with a new arbitration process, forcing the parties to modify the terms of their original agreement after-the-fact. This raises serious legal issues affecting the validity of the amendment, as well as the underlying agreement.

For these reasons and others we respectfully request that you hold H.B. 1830.

Kind regards,

Steve Keali'i Wahamana Hoag, Esq.  
Vice President, Administration



Hawaii Chapter

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January 23, 2012

Representative Angus L.K. McKelvey, Chair  
Representative Isaac W. Choy, Vice-Chair  
Committee on Economic Revitalization & Business  
Ted Yamamura, Government Relations Chair  
The Hawaii Chapter of the Appraisal Institute  
(808) 270-0604  
Tuesday, January 24, 2012

### **Testimony against HB 1830, Relating to Arbitration**

The Hawaii Chapter of the Appraisal Institute is part of an international organization of professional real estate appraisers with nearly 26,000 members and 91 chapters throughout the world. Its mission is to advance professionalism and ethics, global standards, methodologies, and practices through the professional development of property economics worldwide.

We speak against HB 1830, Relating to Arbitration, which proposes to amend Chapter 658A, Hawaii Revised Statutes, by adding a new section regarding real property appraisals. Leases are bonafide contracts between Lessor and Lessee and lease documents typically provide provisions for establishment of rents, appraisal and the selection of appraisers to act as arbitrators. Much of the proposed language in HB 1830 are already incorporated in leases and there is no necessity for government intervention in a process with ample precedence.

Finally, we submit that it is unnecessary for the Department of Commerce and Consumer Affairs to maintain and provide a list of qualified appraisers to the lessor and lessee for an arbitration proceeding. The fact that HRS 466K already provides objective qualification and licensing requirements for appraisers, there is no need to maintain an additional subjective list of "unbiased" and "qualified" appraisers.

We urge the Committee to deny the passage of HB 1830. Thank you for this opportunity to testify.

Ted Yamamura  
Government Relations Chair



January 23, 2012

Representative Angus L.K. McKelvey, Chair  
Representative Isaac W. Choy, Vice Chair  
Committee on Economic Revitalization and Business

RE: HB 1830 Relating to Arbitration and Arbitors

The above legislation appears designed to ensure fair and objective considerations in lease arbitration dealings. If lease arbitration were only necessary for determination of rent, this legislation may work in many circumstances.

However, leases are comprised of much more than simply monetary consideration. In fact communities generally are much the better because lessors and lessees consider more than just the dollars that pass between themselves. Other considerations include – and of course are not limited to –

- The overall maintenance of the leased item.
- Who is responsible for day-to-day cleanliness and safety of the facility and what that cleanliness consists of.
- Hours of operation of businesses in a facility/location.
- External and internal appearance and quality and who is responsible for which.
- Availability and safety of access to the facility including walkways, connection to surrounding facilities, parking lots, reserved parking, etc.
- Responsibility for connections to shared facilities (i.e. waste water, electrical, plumbing, etc.)
- Character of the businesses and their ability to interact, communicate and compliment each other in a neighborhood and in a multitenant building or shopping district.

There was a point in time where our economics and business courses taught that all factors could be simplified into dollars and cents. Those days have long gone, and thankfully so.

The problem with HB 130 is that it takes us back to a time and place where all our business relationships are defined simply in dollars and cents. We have progressed well beyond and arbitration between businesses are an important part of working out the many, many issues that land lords and tenants need to come to agreement on. **PLEASE DO NOT TAKE US BACKWARDS** when we have made the significant progress that we have. **PLEASE DO NOT PASS THIS BILL.**

Sincerely,

Bill Walter  
President

# JAMES W. Y. WONG

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January 23, 2012

**VIA FACSIMILE**  
586-8479

**VIA EMAIL**  
ERBtestimony@Capitol.hawaii.gov

Honorable Representative Angus L. K. McKelvey, Chair  
Honorable Representative Isaac W. Choy, Vice Chair  
Members of the House Committee on Economic Revitalization & Business

**RE: HOUSE BILL HB1830 RELATING TO ARBITRATION**  
**HEARING DATE/TIME/LOCATION: TUESDAY, JANUARY 24, 2012,**  
**AT 8:30 A.M., STATE CAPITOL, CONFERENCE ROOM 312**

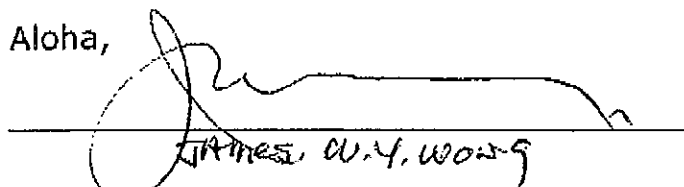
Dear Honorable Chair Angus L. K. McKelvey, Vice-Chair Isaac W. Choy, and  
Members of the House Committee on Economic Revitalization & Business:

I support passage of House Bill HB1830, which is a bill that establishes a process for real estate valuation in an arbitration proceeding to determine fair market value. Under this legislation, real estate appraisers will be selected from a list provided by the Department of Commerce and Consumer Affairs (DCCA). These appraisers must be 1) licensed or certified under chapter 466K, Hawaii Revised Statutes; 2) be unbiased; and 3) must not have any conflicts of interest with either the lessor or lessee. If the DCCA cannot find a reasonable number of qualified appraisers in Hawaii, this law will allow them to find appraisers in another jurisdiction that can be qualified under Hawaii's stringent requirements. Current law does not identify a process by which a third appraiser is selected and by clearly stating a procedure and placing it under the oversight of DCCA, this legislation will bring equity and fairness to the process of determining fair market value or fair and reasonable rent of real property.

The passage of House Bill HB1830 will provide for a fair process to eliminate bias and conflicts of interest to make valuations straightforward and equal for all involved parties.

I urge your approving House Bill HB1830

Aloha,



*James W. Y. Wong*

# NAPUALANI V. WONG

1577 Nehoa Street, Honolulu, Hawaii 96822

January 23, 2012

VIA FACSIMILE  
586-8479

VIA EMAIL  
ERBtestimony@Capitol.hawaii.gov

Honorable Representative Angus L. K. McKelvey, Chair  
Honorable Representative Isaac W. Choy, Vice Chair  
Members of the House Committee on Economic Revitalization & Business

RE: HOUSE BILL HB1830 RELATING TO ARBITRATION  
HEARING DATE/TIME/LOCATION: TUESDAY, JANUARY 24, 2012,  
AT 8:30 A.M., STATE CAPITOL, CONFERENCE ROOM 312

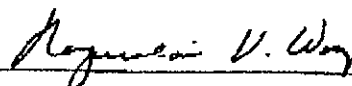
Dear Honorable Chair Angus L. K. McKelvey, Vice-Chair Isaac W. Choy, and  
Members of the House Committee on Economic Revitalization & Business:

I support passage of House Bill HB1830, which is a bill that clarifies the  
procedure to select real estate appraisers that are involved in an arbitration  
proceeding to determine the fair market value or fair market rental of real  
estate.

Hawaii is a small state with a limited number of qualified real estate  
appraisers that are licensed or certified under chapter 466K, HRS. This  
inevitably leads to the possibility of conflicts of interest or bias resulting in  
possibly very disparate values. HB1830 provides for a process by which a  
third arbitrator may be selected from another jurisdiction to allow for  
valuation of lands for sale or lease that are fair and reasonable.

I urge you to approve House Bill 1830.

Aloha,

  
\_\_\_\_\_

January 23, 2012

VIA FACSIMILE  
586-8479

VIA EMAIL  
ERBtestimony@Capitol.hawaii.gov

Honorable Representative Angus L. K. McKelvey, Chair  
Honorable Representative Isaac W. Choy, Vice Chair  
Members of the House Committee on Economic Revitalization & Business

RE: HOUSE BILL HB1830 RELATING TO ARBITRATION  
HEARING DATE/TIME/LOCATION: TUESDAY, JANUARY 24, 2012,  
AT 8:30 A.M., STATE CAPITOL, CONFERENCE ROOM 312

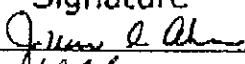

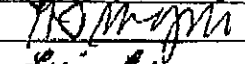
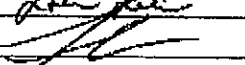


Dear Honorable Chair Angus L. K. McKelvey, Vice-Chair Isaac W. Choy, and  
Members of the House Committee on Economic Revitalization & Business:

**PETITION:**

I support passage of House Bill HB1830, which is a bill that clarifies the  
procedure to select real estate appraisers that are involved in an arbitration  
proceeding to determine the fair market value or fair market rental of real  
estate.

Hawaii is a small state with a limited number of qualified real estate  
appraisers that are licensed or certified under chapter 466K, HRS. This  
inevitably leads to the possibility of conflicts of interest or bias resulting in  
possibly very disparate values. HB1830 provides for a process by which a  
third arbitrator may be selected from another jurisdiction to allow for  
valuation of lands for sale or lease that are fair and reasonable.

We respectfully urge you to please approve Senate Bill SB1830.

Print Name	Signature	Address
James A. Akina		46-298 Kaimukapu St Kaneohe HI 96744
Wishy Torres		P.O. Box 25843 Hono HI 96825
Roz Moore		3358 ALOHA AVE
Carol Sugaia		1044 17th Ave Hono HI 96816
Lori Lee		906 6th Avenue; Hono HI 96816
Jo Paell		2002 McNeil Rd Ewa HI 96222



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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 23, 2012 12:49 PM  
**To:** ERBtestimony  
**Cc:** dwong@99imperial.net  
**Subject:** Testimony for HB1830 on 1/24/2012 8:30:00 AM

Testimony for ERB 1/24/2012 8:30:00 AM HB1830

Conference room: 312  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Darryl Wong  
Organization: Individual  
E-mail: [dwong@99imperial.net](mailto:dwong@99imperial.net)  
Submitted on: 1/23/2012

**Comments:**

Many leases done 50 years ago have preset values of rents for the future generations of Lessees. In some cases, the lease rents owed by Lessees is higher than the earnings the Lessee can afford to pay due to economic downturn in the economy. By allowing unbiased appraisers to review leasehold values provides the needed opportunity for lessees to negotiate fair rents based on current economic times. By allowing the ability to bring in an unbiased appraisers will provide more opportunity for Lessees to have rents determined more fairly because they will not be influenced by past dealings with large landowner valuations.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 23, 2012 12:54 PM  
**To:** ERBtestimony  
**Cc:** jbw1586@gmail.com  
**Subject:** Testimony for HB1830 on 1/24/2012 8:30:00 AM

Testimony for ERB 1/24/2012 8:30:00 AM HB1830

Conference room: 312  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Jordan Wong  
Organization: Individual  
E-mail: [jbw1586@gmail.com](mailto:jbw1586@gmail.com)  
Submitted on: 1/23/2012

Comments:

We need leasehold reform and something other than what is in place needs to be done to correct the imbalance going on in the market place. Old leases done years ago have preset values of rents for the future generations of Lessees. In some cases, the lease rents owed by Lessees is higher than the earnings the Lessee can afford to pay due to economic downturn in the economy. By allowing unbiased appraisers to review leasehold values provides the needed opportunity for lessees to negotiate fair rents based on current economic times. By allowing the ability to bring in an unbiased appraisers will provide more opportunity for Lessees to have rents determined more fairly because they will not be influenced by past dealings with large landowner valuations.

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 23, 2012 1:01 PM  
**To:** ERBtestimony  
**Cc:** jwong1488@gmail.com  
**Subject:** Testimony for HB1830 on 1/24/2012 8:30:00 AM

Testimony for ERB 1/24/2012 8:30:00 AM HB1830

Conference room: 312  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Jenna Wong  
Organization: Individual  
E-mail: [jwong1488@gmail.com](mailto:jwong1488@gmail.com)  
Submitted on: 1/23/2012

Comments:

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**From:** mailinglist@capitol.hawaii.gov  
**Sent:** Monday, January 23, 2012 1:02 PM  
**To:** ERBtestimony  
**Cc:** tbw510@aol.com  
**Subject:** Testimony for HB1830 on 1/24/2012 8:30:00 AM

Testimony for ERB 1/24/2012 8:30:00 AM HB1830

Conference room: 312  
Testifier position: Support  
Testifier will be present: No  
Submitted by: Teresa Brink-Wong  
Organization: Individual  
E-mail: [tbw510@aol.com](mailto:tbw510@aol.com)  
Submitted on: 1/23/2012

Comments: